relationship. The impression her evidence gave is that she wished to appear in the role of a relative of Boon Tean, but in cross-examination showed herself to be primarily an old friend of the plaintiff. Though she visited the house of Boon Tean's mother she did not know the name of his elder sister, who lived in that house and with whom she was on good terms.

The evidence of plaintiff's daughter does not help one way or another as regards repute.

When plaintiff's brother-in-law brought the dying Boon Tean to the principal wife's house, I am disposed to accept that he said Boon Tean had collapsed in Yachiyo Park and omitted to mention the plaintiff's house, for Boon Tean seemingly had been in that park that night and that fact was elicited by the defence. He would thus avoid mentioning the plaintiff.

Is the evidence adduced by the plaintiff sufficiently convincing to establish her claim? Frankly, when the plaintiff's case was closed I felt that it was not, save in respect of the one item to be proved, namely, long continued cohabitation and any intention that might be inferred therefrom. Anything elicited in the defendant's case only supports the plaintiff's in regard to the fact that the deceased did not disclose to his principal wife that he had another wife, and therefore there would be reluctance on his part to make known more than was unavoidable his relationship with the plaintiff.

When Foo Gaik Lin, the principal wife, died, Boon Tean erected a tombstone at her grave and caused inscription to be made thereon in Chinese and English. After his principal wife's name, date of death and age he had his own name inscribed and that of his secondary wife the 1st defednant, leaving the date of death and age to be filled in when ascertained, and thereafter were the letters "R.I.P". The name of the plaintiff does not appear on that stone and space for it is not reserved in the section where the wives' names and Boon Tean's are recorded. One would not have expected this if, as the plaintiff alleges, she would move up to the family house at Logan Road on the death of the 1st defendant and succeed her as wife. Boon Tean died a natural death and could not know that his second wife (the 1st defendant) would survive him, so, had he been consistent, space for the plaintiff's name should have been reserved.

The grave was only for three bodies, but on the tablet at the other side of the central one are inscribed the names of Boon Tean's children, including those adopted. They could not be buried in that grave, so their names must be there merely as a matter of record. Why was there to be no record of plaintiff's name, if she were a secondary wife of Boon Tean? The indication is that he did not consider her as such.

Yeoh Boon Tean took the 1st defendant and his children by her to his mother's house. His elder sister knew them and used to visit 1st defendant in the lifetime of the principal wife. She did not know plaintiff.

Had plaintiff been a secondary wife of Boon Tean, would she not have insisted on taking her rightful place at his funeral and being robed in sack-cloth, the proper attire for a widow on such an occasion in accordance with a not unlawful custom? It seems to me a Chinese secondary wife should be made of sterner stuff than is the plaintiff.

I am satisfied that the plaintiff was not held out as his wife by Boon Tean to any appreciable extent and only to those to whom the making of the representation entailed no great significance. That the circumstances of the presentation to the mother of the deceased make it of little value as evidence. That the only alleged member of the deceased's family, who claims to know plaintiff as wife of Boon Tean, is not sure of her relationship with that family. That whether or not in any particular instance it was through accident of illness or otherwise, the plaintiff did not comply with any of the customs ordinarily observed by a secondary wife, the fact remains that she did not conform with such customary observances.

On a full consideration of the facts and the law there is no doubt in my mind that the plaintiff has failed to prove that she was a secondary wife of Yeoh Boon Tean.

Action Dismissed.

LIM POON POK v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J. F.M.S., Murray-Aynsley, C.J. Singapore and Pretheroe, J.) September 23, 1947]

Criminal Procedure Code, F.M.S. Section 407 (ii) — Whether this Section confers a general power of forfeiture — Second-hand Dealers Ordinance 1947.

In this case the applicant, Lim Poon Pok was convicted by the Magistrate at Ipoh for an offence contrary to Section 12 of the Second-hand Dealers Ordinance, 1947 in that he failed to keep proper books of account. He was fined $100/- in default of payment, two months rigorous imprisonment, and the goods in respect of which he failed to keep proper accounts were ordered to be forfeited by the Magistrate under S. 407 (ii) of the F.M.S. Criminal Procedure Code. The case was referred to the Court of Appeal by the Public Prosecutor under S. 53 of the F.M.S. Courts Enactment (Cap. 2) as the question of whether S. 407 of the F.M.S. Criminal

Procedure Code confers a general power to order forfeiture has been the subject of conflicting decisions in the past.

Held, that it is clear that Section 407 (ii) of the Criminal Procedure Code (as amended) gives to any Criminal Court a general power of forfeiture in respect of any property or document produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence.

Cases referred to :—

(1) *Babu Singh v. Public Prosecutor* (1939) F.M.S.L.R. 228; (1940) M.L.J. 57.

(2) *Tan Khoo Chor v. Public Prosecutor* (1940) F.M.S.L.R. 254; (1941) M.L.J. 160.

(3) *Tan Hoon Swee v. Public Prosecutor* (1927) 6 F.M.S.L.R. 191.

(4) *Chee Ng v. Public Prosecutor* (1947) 13 M.L.J. 112.

CRIMINAL REFERENCE.

M. S. Mahendran for the Applicant.

M. G. Neal for the Respondent.

The judgment of the Court of Appeal was given by:

Willan, C. J. : — In this matter the Applicant was convicted by the Magistrate at Ipoh for an offence contrary to section 12 of the Second-hand Dealers Ordinance, 1947, in that he failed to keep proper books of account. He was fined $100, in default of payment two months rigorous imprisonment, and the goods in respect of which he failed to keep proper accounts were ordered to be forfeited by the Magistrate under sub-section (ii) of section 407 of the Federated Malay States Criminal Procedure Code.

Since the question of whether that section confers a general power to order forfeiture has been the subject of conflicting decisions in the past [*see Babu Singh v. Public Prosecutor*[1], and *Tan Khoo Chor v. Public Prosecutor*[2]] this present case was referred to this Court of Appeal by the Public Prosecutor under section 53 of the Federated Malay States Courts Enactment (Cap. 2).

Sub-section (ii) of section 407 of the Criminal Procedure is as follows :—

> During or at the conclusion of any inquiry or trial in any Criminal Court the Court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it or in its custody or the custody of the police or of any public servant regarding which any offence appears to have been committed or which has been used for the commission of any offence.
>
> The power herein conferred upon the Court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the Enactment under which the conviction was had.

In 1927 the Johore Court of Appeal in the case of *Tan Hoon Swee v. Public Prosecutor*[3] decided (Murison C. J. Straits Settlements, dissenting) that the above-mentioned sub-section, prior to being amended in the year 1932, as set out later in this judgment, did not confer a general substantive power of forfeiture but merely regulated the exercise of the powers of forfeiture when such powers are given by any specific law.

At the time of that decision sub-section (ii) of section 407 was in the following shorter form :—

> When an inquiry or a trial in any criminal Court is concluded the Court may make such order as it thinks fit for the disposal of any property or document whatsoever produced before it or in its custody or the custody of the police or of any public servant regarding which any offence appears to have been committed or which has been used for the commission of any offence.

Counsel for the applicant cited this case to us as an authority that sub-section (ii) of section 407, in its present form (the second paragraph whereof was added by the Criminal Procedure Code (Amendment) Enactment 1932) does not confer a general power of forfeiture. His argument, following the decision in that case, is that there is no right of forfeiture unless one is so given by the particular law under which an accused person is prosecuted. On being asked by us what was the effect of the 1932 amendment, if, as he contended, forfeiture must depend on specific powers given by a particular law, counsel for the applicant could only quote the maxim *abundans cautela non nocet.*

In our view the amendment of this sub-section in the year 1932 makes it clear beyond doubt that this sub-section gives to any Criminal Court a general power of forfeiture in respect of any property or document produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. This is clear from the words in the second paragraph of that sub-section :—

> The power herein conferred upon the Court shall include the power to make an order for the forfeiture .....of such property.

"Such property" refers back to the property described in the first paragraph of that sub-section i.e. property regarding which any offence appears to have been committed or which has been used for the commission of any offence.

In our view the reason for the 1932 amendment was on account of the decision in the case of *Tan Hoon Swee v. Public Prosecutor* (supra) restricting forfeiture

of property by that decision to prosecutions under any law e.g. the Customs Enactment, which specifically provides for an order of forfeiture being made.

If this sub-section does not give a general power of forfeiture there would be no power, for instance, for a Court to order the forfeiture of any fire-arm, where a person is convicted for the offence of carrying arms, or to order forfeiture of the weapon used by a person convicted of murder.

Finally, counsel for the applicant referred us to the recent case of *Chee Ng v. Public Prosecutor*[4] in which Evans J. held that since the Penal Code makes special provision as to the cases in which forfeiture of property is a proper punishment e.g. sections 126, 127 and 169, it is only in those cases that the Court can make an order for forfeiture or confiscation of property under sub-section (ii) of section 407 of the Criminal Procedure Code. In view of our decision in this matter that case is now over-ruled.

Appeal Dismissed.

SETAPAK TIN SYNDICATE LTD. AND ANOTHER v. CHOO KIM PENG.

[Orig. Civil Juris. (Willan, C.J.) August 30, 1947]

Civil Procedure Code (F.M.S.) Section 500 — Motion to appoint Interim Receiver — when order can be made by the Court.

In this case the Setapak Tin Syndicate Ltd. (in voluntary liquidation) and the Ban Hock Hin Mining Company Ltd. (in voluntary liquidation) applied by their respective liquidators by motion for an order that an interim receiver be appointed of certain mining property in Kuala Lumpur.

The facts were shortly as follows:—On the 27th day of May 2603 (1943) during the Japanese occupation, the first plaintiff-company granted an option to the second plaintiff-company to purchase the mining property in question. The second plaintiff-company exercised the said option and agreed to sell the property to the defendant. The defendant agreed to purchase the said property, and the first plaintiff-company agreed to give a transfer and assignment direct to the defendant. An agreement was entered into to that effect and the purchase price agreed upon was $650,000.00 which was paid by the defendant. By that agreement, the defendant was entitled to enter into possession of the said property, as at the date of the agreement notwithstanding that the necessary transfers and assignments had not been executed. The agreement is dated the 19th day of August 1943, and from that date the defendant went into possession of the said property. The two plaintiff companies in the present suit sought to set aside the agreement of the 19th of August 1943 and it was in connection with this suit that the motion for the appointment of an interim receiver was filed.

Held, (1) that before the Court can make an order for the appointment of an Interim Receiver it must be satisfied (a) that the plaintiff has established a good **prima facie** claim to title and also (b) that the property is in jeopardy or (c) at the very least that the party who makes the application will be in a worse situation if the appointment of a receiver is delayed; (2) that on the facts of this case, the plaintiffs have not established a **prima facie** claim to title and so the Court would not be justified in appointing an Interim Receiver and turning the defendant out of possession (3) that on the facts, it had not been proved that the property was in jeopardy and that this was an additional ground for not acceding to the motion to appoint an Interim Receiver.

Cases referred to :—

(1) *Gibbs v. David* L.R. 20 Eq. 373.

(2) *George v. Evans* 160 E.R. 932.

(3) *Owen and Gutch v. Homan* 4 H.L.C. 997.

ON A NOTICE OF MOTION.

E. D. Shearn for the plaintiffs.

Roland Braddell for the defendant.

Willan, C. J. : — This is a motion by the plaintiffs for an order that an Interim Receiver be appointed of mining property, plant, machinery, buildings, stores and other assets situated on land comprised in certain mining leases and mining certificates in the township of Kuala Lumpur.

On the 27th day of May, 2603 (1943), during the Japanese occupation of Malaya, the first plaintiff-company granted an option to the second plaintiff-company to purchase certain mining property. The second plaintiff-company exercised the said option and agreed to sell the property to the defendant. The defendant agreed to purchase the said property, and the first plaintiff-company agreed to give a transfer and assignment direct to the defendant.

An agreement was entered into to that effect, and the purchase price agreed upon was $650,000, which was paid by the defendant. By that agreement the defendant was entitled to enter into possession of the said property, as at the date of the agreement, notwithstanding that the necessary transfers and assignments had not been executed. The agreement is dated the 19th day of August, 1943, and from that date the defendant has been in possession of the said property.

The defendant is a landowner and miner, and the plaint in this suit avers that at the time of that agreement he was a director of the second plaintiff-company.

The two plaintiff-companies seek to set aside the agreement of the 19th day of August, 1943, on the grounds that :—

(1) The second plaintiff-company executed the agreement aforesaid by coercion and or undue influence brought by the Japanese